

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Ron Zachary Pettit,

10 Plaintiff,

11 v.

12 R. Sierra, et al.,

13 Defendants.  
14

No. CV-19-02062-PHX-ROS (MTM)

**ORDER**

15 The only remaining claim in this case is Plaintiff's claim against Defendant Sierra  
16 alleging excessive force. Plaintiff was recently appointed counsel and, through that  
17 counsel, Plaintiff seeks to reopen discovery to allow for the deposition of three witnesses:  
18 Defendant Sierra, Registered Nurse Carrie Hughes, and "an Arizona Department of  
19 Corrections representative who can speak to the process of preserving investigation  
20 records, including video evidence." (Doc. 78). Plaintiff also requests he be allowed to  
21 seek production of "all records and files as it relates to [his] inmate grievance complaints  
22 against Defendant Sierra" on specified dates and "documents showing practices, policies,  
23 and procedures governing the retention of investigative records." (Doc. 78 at 5).  
24 Defendant opposes reopening discovery, claiming "the amount, and quality, of the  
25 discovery already completed in this case" establish reopening discovery would be  
26 inappropriate. (Doc. 79 at 3).

27 The Ninth Circuit has established a six-factor test for determining whether to reopen  
28 discovery. Those factors are:

1 1) whether trial is imminent, 2) whether the request is opposed,  
 2 3) whether the non-moving party would be prejudiced, 4)  
 3 whether the moving party was diligent in obtaining discovery  
 4 within the guidelines established by the court, 5) the  
 foreseeability of the need for additional discovery in light of  
 the time allowed for discovery by the district court, and 6) the  
 likelihood that the discovery will lead to relevant evidence.

5 *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017). Here, four  
 6 factors support Plaintiff, one supports Defendant, and one is neutral. The factors  
 7 supporting Plaintiff are that no trial is imminent, Defendant will not suffer a cognizable  
 8 form of prejudice, Plaintiff was diligent during the discovery period but was limited by his  
 9 status as an incarcerated pro se prisoner, and the additional discovery will lead to relevant  
 10 evidence. The only factor supporting Defendant is that he opposes the request. Finally,  
 11 the factor regarding “the foreseeability of the need” for additional discovery supports  
 12 neither party.

13 In these circumstances, it is appropriate to reopen discovery to allow Plaintiff the  
 14 very limited amount of additional discovery he has outlined. Doing so will allow for the  
 15 creation of a complete record, most importantly a record regarding the alleged destruction  
 16 of relevant evidence. Plaintiff will be given three months to conduct the additional  
 17 discovery after which the parties will be required to schedule a settlement conference.  
 18 Because the additional discovery may impact Plaintiff’s motion for spoliation sanctions,  
 19 that motion will be denied without prejudice. Plaintiff may renew that motion if, after  
 20 discovery, he believes spoliation sanctions are appropriate.

21 Accordingly,

22 **IT IS ORDERED** the Motion to Continue Settlement Conference and Reopen  
 23 Discovery (Doc. 78) is **GRANTED**. Plaintiff is permitted to seek the discovery outlined  
 24 in his motion. That discovery shall be completed no later than **March 26, 2021**.

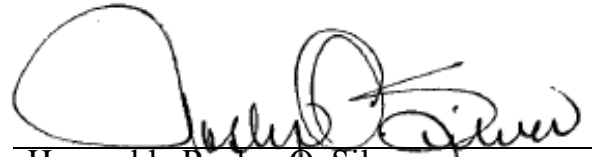
25 **IT IS FURTHER ORDERED** no later than **March 29, 2021**, the parties shall  
 26 contact Magistrate Judge Fine’s chambers to schedule their settlement conference.

27 **IT IS FURTHER ORDERED** the Motion for Spoliation Sanctions (Doc. 54) is  
 28 **DENIED WITHOUT PREJUDICE**. If Plaintiff wishes to renew this motion, he must do

1 so within fourteen days after the settlement conference.

2 **IT IS FURTHER ORDERED** the Motions to Strike (Doc. 65, 68) are **DENIED**  
3 **AS MOOT.**

4 Dated this 29th day of December, 2020.

5  
6  
7 

8 Honorable Roslyn O. Silver  
9 Senior United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28